

REMARKS

A. Status of the Claims

Claims 1-2, 4, 6, 8-14, 22 and 35 have been amended and claims 3, 5, 7, 15-21, 23-34 and 36-49 have been canceled. Thus, claims 1-2, 4, 6, 8-14, 22 and 35 are currently pending and under examination. Support for the amendment to claim 35 is found, at least, in original claim 1. Claims 1-2, 4, 6, 8-14 and 22 have been amended to depend from claim 35. No new matter has been added. Applicants reserve the right to reintroduce the subject matter of any canceled or amended claim in a future continuation application.

B. Summary of telephonic interview with the Examiner

In the Office Action dated March 4, 2008 the Examiner indicated that claim 35 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph by including “all of the limitations of the base claim.” To clarify the Examiner’s position Applicants’ representative conducted a telephonic interview with Examiner Mosher on June 24, 2008. A summary of the interview was provided by Examiner Mosher in an interview summary dated June 30, 2008. Briefly, the Examiner indicated that if features from claim 1 concerning “altered gD” were introduced into claim 35, then the rejections of claim 35 over 35 U.S.C. §112, second paragraph would likely be overcome. Pursuant to this indication, Applicants have amended claim 35 by further defining the term “altered gD,” as in original claim 1.

C. Claim rejections under 35 U.S.C. §112, second paragraph, are overcome

The Examiner has rejected claims 15, 16, 22, 23 and 35 under 35 U.S.C. §112, second paragraph as assertedly indefinite. In particular, the Examiner called in to question the clarity of the term “altered gD” in the indicated claims. In response and pursuant to the interview with the Examiner, Applicants have amended claim 35 to further define the term “altered gD” as a gD protein exhibiting reduced binding to one or more cellular receptor for wild-type gD. The specification comprises detailed description regarding cellular receptors for gD and the structural features that are required for gD interaction with receptors (*see, e.g.*, page 3-4 and page 11, lines 7-9). Furthermore, all of the pending claims in the case have

been amended to depend from claim 35. In addition claims 15, 16 and 23 have been canceled. In view of these amendments, Applicants submit that the rejection of claims 22 (now dependent on claim 35) and 35 under 35 U.S.C. §112, second paragraph, has been overcome and that the rejection of claims 15, 16 and 23 has been rendered moot.

D. Double patenting rejections

The Examiner has provisionally rejected claims 1, 2, 4, 6, 8-16, 19, 20, 22, 23, 26 and 35 on the grounds of non-statutory obviousness-type double patenting over claims 1-24 and 36 of co-pending U.S. Patent Application 11/215,636 and over claims 1-3, 7, 10, 15-21 and 25-30 of co-pending U.S. Patent Application 11/677,026. Applicants will address this issue when claims pending in the above-captioned application are indicated as otherwise allowable.

E. Claim rejections under 35 U.S.C. §103(a) are rendered moot

The Examiner rejected claims 1, 2, 4, 6, 8-10, 15, 16, 19, 20, 22 and 23 as assertedly obvious under 35 U.S.C. §103(a) over Glorioso et al. WO 99/06583. In response, Applicants note that all claims have been amended to depend from claim 35, which was not subject to the obviousness rejection. Thus, Applicants believe that this rejection is rendered moot and its removal is requested.

F. Conclusion

In view of the above amendment, Applicants believe the pending application is in condition for allowance. The Examiner is invited to contact Applicants' undersigned representative with any questions or concerns.

Dated: July 11, 2008

Respectfully submitted,

By 

Marshall P. Byrd

Registration No.: 62,454
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Agents for Applicant